by the new trustees. The costs of this motion will be costs in the cause.

A draft order embodying the above terms in more formal language should be submitted to me for approval.

Solicitors for applicant—*Mendis & Ahlip.*
Solicitors for Plaintiff—*Claude da Silva & Co.*
Solicitors for Defendants—*Braddell Bros.*
Solicitors for Choo Yun Kam—
Allen & Gledhill.
Solicitors for Thio Sze Long—
Mallal & Namazie.

[ORIGINAL CIVIL JURISDICTION]
ADRIAN CLARK, J.
February 5, 1937.

WONG LIN THYE v. WONG YEEN YONG & ANOR.

[SINGAPORE SUIT No. 6 of 1935]
[SUMMONS No. 6 of 1937]

Practice—Costs of unnecessary proceedings —disallowance of—Judge's discretion.

When a party has been given leave by the Court to intervene in an administration suit and to have the conduct thereof his costs are in the discretion of the Court.

SUMMONS IN CHAMBERS Adjourned into Open Court.

The facts and arguments sufficiently appear from the judgment below.

Mallal, for 2nd defendant and Tan Ho Oon & Co., Ltd., (trustees of the Will and estate of Wong Yoon Fee deceased)—Applicants.

Burke, for Cheong Sow Ying, a party having conduct of this suit—Respondent.

Hoalim, for Wong Kai Woon and Wong Kai Yat (infants).

Cur. Ad. Vult.

ADRIAN CLARK, J.—The Summons in this Administration Suit which is now before me for adjudication is Summons No. 6 of 1937, dated 6th January 1937. By that Summons the new Trustees, recently appointed by order of the Court in these proceedings, ask whether Cheong Sow Ying is entitled out of the estate to be paid costs incurred by her in these proceedings prior to the 10th August 1936.

This Administration Suit is of that type which has given me, during the time I have sat on the Bench of this Colony, much anxiety.

The Testator died in 1926 appointing two of his sons, Wong Yeen Yong and Wong Foo Yong, to be his executors and trustees.

Wong Yeen Yong proved the will in 1926 but Wong Foo Yong, being then a minor, did not take out double probate till 1933 and took charge, as a trustee only from January 1934.

In January of 1935 a beneficiary who was entitled to have expended for her marriage expenses the sum of $2,000 started this administration suit.

It is still going on, and judging by similar administration suits that I have had before me, it is liable to go on indefinitely.

Up till now the Index of Documents on the Record shows that 134 separate documents have been filed. They refer to nearly 30 different proceedings, by summons and otherwise.

The estate was originally sworn at a little over $50,000. The costs payable to the solicitors concerned already amount, approximately, to some 12 to $15,000. Of these some $6,000 represent the costs referred to in this Summons.

So far I have not been satisfied that the persons amongst whom the Testator intended that his property should be divided have in any practical way benefited by this wealth of proceedings.

There is something obviously wrong in this state of affairs, something that makes one fear that the administration of justice has not progressed as far as one hoped it had done since the times that were parodied by Dickens in the case that he called *Jarndyce* v. *Jarndyce*.

I am not suggesting that the proceedings taken in this case could not all be justified under our Civil Procedure Rules nor that the solicitors concerned have not done a great deal of work in the matter for which, if it really had to be done, they are entitled to be paid, either by their clients or out of the estate. I know, indeed, that the great bulk of the legal profession in this Colony are equally anxious to see proceedings such as these simplified and their cost rendered less prohibitive.

It might be well to appoint a Committee to revise entirely our present procedure but, even under the existing rules, a good deal can be done and should be done to lessen the burden on an estate of costs, which very often are merely thrown away, and which, by diminishing (sometimes to vanishing point) the shares of beneficiaries under the will or trust, defeat the very objects for which proceedings purport to have been instituted. It will not do to lead the public to believe, even if unjustly, that any officer of this Court commences or institutes these proceedings merely to divert large portions of the estate into his own pockets, in the shape of fees, which, sometimes, the beneficiary for whom he appears could never pay out of his own share of the estate.

It seems to me that orders in these proceedings, which are usually disposed of merely as one item in a long and tedious Chambers-list, may have been often made too much as a matter of course.

The provisions of Order 52 rule 11 are not made use of as often as they might be.

Again it is useless to involve the estate in heavy costs in enforcing the rendering of accounts by trustees their subsequent surcharge and falsification (often in great detail, in connexion with petty amounts, and in lists delivered by more than one firm of solicitors acting for different parties) and long enquiries by the Registrar, *unless* there is some substantial hope of recovering from any defaulting trustee the amounts found to be owing by him to the estate. If there is *prima facie* evidence that he has committed criminal breach of trust and if he is not in a financial position to indemnify the estate it is surely sufficient to hand over matters to the police.

In most of the cases in which maladministration is alleged the essential thing is to ensure the *salvage*, for the benefit of the beneficiaries, of what is left of the estate; not to reduce it further by legal costs.

This can very often best be done merely by appointing new trustees of unquestioned responbility (a Trust Corporation or the Public Trustee) and by leaving it to them to decide, on legal advice if necessary, what is best to be done for the estate. I have in some cases, so far without complaint, where there existed against a trustee *prima facie* evidence of maladministration which it would take long to sift, immediately replaced him by a Trust Corporation, giving the original trustee liberty to apply for reinstatement if and when the allegations against him had been investigated.

It is impossible to lay down hard and fast rules but it is certainly necessary that no solicitor concerned (and especially any solicitor acting for trustees against whom no serious allegation is made) should without full consideration apply for or consent to, and that no Judge should without full consideration make any order which is more likely to involve an estate in costs than to benefit it.

In the present case the applicant, Cheong Sow Ying, in August of 1935, through her solicitors Messrs. John G. Campbell & Co., applied for leave to attend these proceedings and to have all her costs paid out of the estate. She made this application solely in her capacity as administratrix of her husband Wong Khim Yong a son of the testator, who, she alleged, was a residuary legatee. Although the second defendant filed an affidavit demonstrating that Wong Khim Yong was no such thing, and was in fact indebted to the estate, and although no counter-affidavit was filed, Cheong Sow Ying obtained an order in terms of her summons. Having obtained leave to attend, Cheong Sow Ying's solicitors then applied for and obtained for her the conduct of the proceedings.

She took advantage of this order by immediately making an application, not for the benefit of the estate as a whole but for her own. Her application was for payment to her of a monthly sum for maintenance of herself and of her 4 children. Neither herself nor two out of her four children had any direct claim on this estate but she nevertheless obtained her order.

Her solicitors then filed surcharges and falsifications, Messrs. Sisson & Delay for the original plaintiff (although her $2,000 had then been paid into Court) filing a separate list of surcharges and falsifications.

The next step taken by Cheong Sow Ying's solicitors was to have Receivers appointed and once they were appointed, Messrs. J. G. Campbell & Co. became solicitors for the Receivers and, as such, have been paid approximately $1,000 out of the estate apart from the costs in question in the summons.

On 11th February 1936 a summons was filed in Cheong Sow Ying's name asking that her solicitors' costs be paid by the 2nd defendant personally or out of his share of the estate.

On 9th May 1936 the representation of Cheong Sow Ying passed to Messrs. Mendis & Ahlip as solicitors.

On 3rd June 1936 Messrs. J. G. Campbell & Co. filed, in their own name, a summons asking that the Receivers should pay out to them the amount of their bill of costs not only for the present proceedings but also in an abortive administration suit they had originally instituted in Cheong Sow Ying's name and in the proceedings in which she obtained administration of her husband's estate.

This summons was dismissed with costs against Messrs. J. G. Campbell & Co., by Cobbett Ag. J. and with his written grounds of decision, filed in the record, I entirely agree.

On 6th August 1936 Cheong Sow Ying, through her present solicitors, applied for conduct of the proceedings as next friend of her two infant sons who admittedly have an interest in the estate.

By the same summons Cheong Sow Ying applied for an order that the Orders of Court of 19th August 1935 and 16th September 1935 (giving her leave to attend with costs out of the estate, and giving her the conduct of the Suit, respectively) should be discharged. Mr. Burke, in the argument on this summons, suggested that the Court had no jurisdiction to discharge its own Orders but the Order which was made on this summons was made on the application of Cheong Sow Ying herself and with the consent of all parties.

In the affidavit supporting this application Cheong Sow Ying swore that the "application by my former solicitors, Messrs. John G. Campbell & Co., upon which the said two orders were made was irregular as neither I myself nor the estate of the said Wong Khim Yong deceased has any interest in the estate of the said Wong Yoon Fee deceased."

In these circumstances I do not see why the estate should be burdened with these costs.

Mr. Burke has argued that there is here only a technicality and that if Cheong Sow Ying had originally based her application on her guardianship of her infant sons the Court would have made the same orders which it did make.

The application for maintenance for herself and her daughters, however, could not have properly been made in these proceedings on behalf of the infant sons. As to the others I might be inclined to allow the costs if I were satisfied that the Orders obtained were necessary for the protection of the estate and beneficial to it.

I am not satisfied of this. From beginning to end the accusations of maladministration have been aimed at the first defendant trustee only and he has only recently taken part in the proceedings. From beginning to end the second defendant trustee has admitted the maladministration by the first trustee and has apparently done all in his power to clear up the mess. He is still a trustee although the first defendant has been removed and replaced at any rate for the time being. This action for the removal of the first defendant could have been taken at the beginning and would I think have been the only action necessary (except the obtaining of accounts from the first defendant). It does not appear to me that the appointment of a Receiver or any of the other steps taken by Cheong Sow Ying during her conduct of the proceedings as administratrix of her husband's estate, were of any real benefit to this estate.

If, as Mr. Burke has suggested in argument, the estate of her husband (who had only a life interest in the present estate, who survived the testator by a few months only and who is alleged to owe the testator's estate over $9,000) should be shown, on a final account being taken, to be in fact owed any sum by this estate then Messrs. J. G. Campbell & Co. can look to that share for their fees and I am prepared to authorize the present trustees to pay the amount (if any) eventually found to be owing to Wong Khim Yong's estate to Messrs. J. G. Campbell & Co. direct as solicitors for the administratrix of Wong Khim Yong.

Beyond that I am not prepared to direct the present trustees to burden the estate and to lessen the share in it of other beneficiaries by paying out of it costs incurred by a person who has admitted on oath that her applications were irregular and that she had no interest in this estate, and who has herself obtained from the Court an order discharging the orders made on those irregular applications and under which alone she could be entitled to claim her costs as of right.

I do not understand in any case why those costs should amount to nearly $6,000 but that will be a matter for the Registrar who will doubtless scrutinize the bill carefully if and when it comes before him for taxation.

On the present summons therefore my decision is that Cheong Sow Ying is not entitled to any costs out of the estate incurred by her previous to the Order of Court dated the 1st day of August 1936 but that the trustees if and when it is finally determined that any sum is due from the estate to the estate of Wong Khim Yong deceased may pay that sum direct to Messrs. J. G. Campbell & Co. on behalf of the administratrix of the latter estate.

As to the costs of this application the costs of the present trustees will be paid out of the estate. The costs of any other parties who were represented may be paid by the trustees to the solicitors of those parties out of any monies that may become due out of the estate to those parties.

Order accordingly.

Solicitors for Trustees—*Mallal & Namazie.*

Solicitors for Cheong Sow Ying—*John G. Campbell & Co.*

Solicitors for Wong Kai Woon & Wong Kai Yat (Infants)—*Mendis & Ahlip.*

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
February 10, 1938.

IN RE ABDUL SALAM DECEASED.
ABDUL RAZAK v. KASI MOHAMED SHIRAZIL ANWAR.

[SINGAPORE ORIGINATING SUMMONS No. 7 of 1938.]

Conflict of Laws—Share in proceeds of sale of Residuary Estate—Moveables or immoveables —Whether lex situs or lex domicilii applicable on intestacy of beneficiary—Infant—Majority according to lex domicilii—Payment of share—Administrator and Infant Beneficiary—Advancement out of Capital.

A share in the proceeds of sale of residue is moveable property even though such residue consists principally of immoveable property which though held on trust for sale has not yet been sold. Where the person entitled to such share dies intestate domiciled in a foreign country, the share devolves according to the *lex domicilii.*